

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FUAD AHMED ABDO NAJI,

Case No. 19-203

Plaintiff,

v.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES.

Defendant.

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COMPLAINT

I. NATURE OF ACTION

1. Plaintiff, Fuad Ahmed Abdo Nagi (“Plaintiff”), by his counsel, Wade M. German, Esq. at The Law Offices of Wade M. German, brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff submitted FOIA requests for records of: (1) the Alien (or A-) File of Plaintiff, and (2) the U.S. entrances and exits of the Plaintiff’s biological father, Ahmed Abdo Nagi, who is deceased. Defendant, United States Citizenship and Immigration Services (“Defendant” or “USCIS”), an agency within the United States Department of Homeland Security (“DHS”), acknowledged receipt on October 19, 2018 and October 25, 2018 of Plaintiff’s FOIA requests for records. Defendant has violated FOIA by failing to render a determination on Plaintiff’s requests for records within the statutorily-prescribed time limit, failing to disclose the requested records that

Plaintiff has a right to receive, and unlawfully withholding the requested records. Plaintiff asks the Court to order Defendant to respond to his FOIA requests and immediately disclose to Plaintiff, through his counsel, all responsive records improperly withheld from Plaintiff.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.

3. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

III. PARTIES

5. Plaintiff, Fuad Ahmed Abdo Nagi, resides at 318 Tompkins Avenue, Apt.2R, Brooklyn, NY 11216 which is in the jurisdiction of the United States District Court for the Eastern District of New York.

6. Defendant, USCIS, is a federal agency within DHS that oversees lawful immigration to the United States. USCIS is headquartered at 20 Massachusetts Avenue, NW, Washington, D.C. 20008, and with an office in New York at Jacob

Javits Federal Building, 26 Federal Plaza, 8th Floor, Room 8-800, New York, NY 10278.

IV. STATUTORY FRAMEWORK

7. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A).

8. USCIS is an “agency” within the meaning of 5 U.S.C. § 552(f)(1) and therefore must comply with the nondiscretionary statutory requirements of FOIA.

9. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines for agencies to promptly provide records under or otherwise issue a determination to FOIA requests. *See*, 5 U.S.C. § 552(a)(6)(A).

10. An agency must comply with a FOIA requests by issuing a determination within 20 working days following its receipt of request for records. 5 U.S.C. § 552(a)(6)(A)(i).

11. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

12. An agency may be entitled to one ten-day extension of time to respond to a request if that agency provides written notice to the requester explaining "unusual circumstances" exist that warrant additional time. 5 U.S.C. § 552(a)(6)(B).

13. An agency must promptly notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right of such person to appeal an adverse determination. 5 U.S.C. § 552(a)(6)(A)(i). Further, an agency must make available a FOIA public liaison to aid the requestor in limiting the scope of the request so that it may be processed within the statutory time limit. 5 U.S.C. § 552(a)(6)(B)(ii).

14. An agency's failure to comply with any timing requirements is deemed constructive denial and satisfies the requester's requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

15. The burden of proof on all elements of FOIA is expressly "on the agency to sustain its action" and never on the plaintiff. The district courts are directed to "determine the matter de novo." 5 U.S.C. § 552(a)(4)(B).

16. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency's continued withholding of public records. 5 U.S.C. § 552(a)(4)(B).

V. FACTS

17. On October 9, 2018, Plaintiff through counsel sent FOIA requests via electronic mail to USCIS seeking: (1) the Alien (or A-) File of Plaintiff, and (2) the U.S. entrances and exits of the Plaintiff's biological father, Ahmed Abdo Naji, who is deceased. (*See* Exhibit A, Plaintiff's FOIA Requests).

18. Counsel for Plaintiff submitted Plaintiff's requests for records to USCIS in connection with preparation for Plaintiff's U.S. passport revocation hearing at the U.S. Department of State in Washington D.C. (the "Hearing").

19. Plaintiff received a letter from the State Department dated May 17, 2018 wherein the State Department revoked Plaintiff's U.S. passport; thereafter, Plaintiff retained counsel to represent Plaintiff at the Hearing, which occurred on January 11, 2019.

20. As part of the Plaintiff's FOIA requests for records, Plaintiff's counsel expressly informed USCIS that Plaintiff is subject to a U.S. passport revocation hearing and essential to the hearing is counsel's review of USCIS's response to the requests for records (*See* Exhibit A).

21. On October 19, 2018, USCIS by post mail confirmed its receipt of the request for records relating to Plaintiff and assigned to such request control number NRC201818154454 ("Notice A"). Notice A stated in part that, "Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request." Based on the foregoing, USCIS invoked its only

10-day extension to respond to that request, pursuant to 5 U.S.C. § 552(a)(6)(B). (See Exhibit B, Notice A and B).

22. On October 25, 2018, USCIS by post mail confirmed receipt of the request for records relating to Plaintiff's biological father, Ahmed Abdo Nagi, and assigned to such request control number NRC201818157272 ("Notice B"). Notice B stated in part that, "Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request." Based on the foregoing, USCIS invoked its only 10-day extension to respond to that request, pursuant to 5 U.S.C. § 552(a)(6)(B). (See Exhibit B, Notice A and B).

23. Each of Notice A and B also stated, in part, that the statutory time limit for processing the respective requests (i.e., 20 working days following receipt) cannot be met because of unusual circumstances; and that Plaintiff's request had been assigned to "Track 2," indicating a complex request. (See Exhibit B)

24. As of Plaintiff's receipt of Notice A and B, Plaintiff's counsel has monitored the progress of Plaintiff's requests for records.

25. USCIS has not objected to the requests for records nor provided any detailed information regarding specific circumstances preventing the disclosure of the records sought. USCIS also has not provided contact information for its FOIA public liaison to discuss the requests or to discuss a timeframe for its resolution, in violation of 5 U.S.C. § 552(a)(6)(B)(ii).

26. Despite Plaintiff's efforts, Defendant has not produced any responsive records.

27. Greater than thirty (30) working days have occurred following USCIS's acknowledged receipt of Plaintiff's requests for records under FOIA.

VI. STATEMENT OF CLAIMS

Count I: Failure to Respond to Request Within Statutory Timeframe

28. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

29. Where Defendant has failed to provide any substantive responses to FOIA requests within the statutory timeframe, it has constructively denied the requests. As such, Plaintiff has exhausted all of Plaintiff's administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

30. Plaintiff under FOIA has a legal right to the requested records. Defendant has improperly withheld the records, forcing Plaintiff to initiate this action to enforce his rights.

31. Defendant failed to respond to the requests within the statutorily-mandated timeframe, in violation of Plaintiffs' rights under FOIA, including but not limited to 5 U.S.C. §§ 552(a)(6)(A)(i) and (6)(B).

Count II: Failure to Identify FOIA Public Liaisons

32. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

33. At no time after receipt of the requests for records has Defendant provided contact information for its FOIA public liaisons, or otherwise made such liaison available to Plaintiffs.

34. Defendant's failure to provide contact information for its FOIA public liaison or make him or her available to Plaintiffs violated Plaintiffs' rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(6)(B)(ii).

Count III: Failure to Produce Responsive Records

35. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

36. Defendant failed to make reasonable efforts to search for records responsive to the Requests, in violation of Plaintiffs' rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(3).

37. Defendant failed to disclose and produce any records responsive to the requests, violating Plaintiff's rights to such records under FOIA, including but not limited to under 5 U.S.C. § 552(a)(3)(A).

38. Defendant failed to disclose and produce records responsive to the Requests without a legal basis for withholding such records, in violation of FOIA, including but not limited to 5 U.S.C. §§ 552(a)(3)(A) and (6)(A).

39. Plaintiff upon prevailing hereunder is entitled to reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests that this Court:

- (a) Expedite its consideration of this action pursuant to 28 U.S.C. § 1657;
- (b) Find that Defendant's failure to timely respond or disclose records is unlawful;
- (c) Order Defendant to search for and promptly disclose all records responsive to Plaintiff's Requests;
- (d) Award to Plaintiff his attorneys' fees and costs in connection with this action; and
- (e) Grant such other relief as the Court may deem just and proper.

Dated: New York, NY
January 16, 2019

Respectfully Submitted,

By: /s/Wade M. German
Wade M. German

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